IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 163 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

COMMISSIONER OF INCOME TAX

Versus

NEW GIRISH COLD DRINKS

Appearance:

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner

MR MR RK PATEL for KC PATEL for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT

(Per D.M. Dharmadhikari, C.J.)

The assessee is carrying on business of selling of cold drinks and dairy products. The assessee in his case for Assessment Year 1979-80 claimed relief under sec. 80J of the Income-tax Act in respect of its alleged business of manufacturing dairy products. The I.T.O. rejected the claim of the assessee on the ground that the sale of cold drinks or sale of sweet meats did not constitute an industrial activity. The Appellant Assistant Commissioner, on appeal, held the assessee entitled to relief under sec. 80J. The Tribunal, on appeal by the revenue, confirmed the decision taken by the AAC. It is on the above facts that, at the instance of the revenue, this reference under sec. 256(1) of the Income-tax Act, 1961, has been made, on the following question of law, for our opinion.

"Whether, on the facts and in the circumstances of the case, the assessee's activity could be considered to be an industrial activity to be entitled to relief u/s 80J of the I.T. Act, 1961?"

2. The learned counsel for the parties have brought to our notice the latest decision of the Supreme Court in the case of Indian Hotels Co. Ltd. v. Income-tax Officer reported in (2000) 112 Taxman 46. In this case the Supreme Court had occasion to consider views of various High Courts of the country on the interpretation of the provisions of sec. 80J of the Income-tax Act.

3. Considering the case law on the subject, the Supreme Court in the case of Indian Hotels Co. Ltd. (supra) came to the conclusion that, for the purpose of getting benefit under sec. 80J, the assessee must be engaged in the business of manufacture or production of any article or thing. In case of preparing food packages or selling the same or preparing foodstuffs for serving in the hotel, no manufacture or production is involved. The raw material is at the most processed so as to make it eatable. The word 'manufacture' has various shades of meaning, but, unless defined under the Act, it is to be interpreted in the context of the object and the language used in the sections. In the context of the provisions which deal with grant of investment rebate or deduction under sec. 80J, it is apparent that it is used to mean production of a new article or bringing into existence some new commodity by an industrial undertaking. It would not be applicable in cases where only processing activity is carried out.

4. In the case of Indian Hotels Co. Ltd. (supra), Taj Flight Kitchen was an industrial undertaking engaged in the production of food packages on a large-scale in an organised and mechanised manner with sophisticated and modern techniques. Its dominant purpose was manufacture of food cover for sale to the airlines. The Supreme Court held that foodstuffs prepared in the hotels using raw materials such as cereals, pulses, vegetables or meat cannot be said to be a "manufacturing activity" and such activity was only a "trading activity". It was held that the business of hotel is essentially non-manufacturing or non-producing or even non-processing concern. It is merely a trading concern.

5. In the present case, the assessee is engaged in the business of selling of cold drinks and dairy products. The activities undertaken by the assessee cannot be called manufacturing activities. As held by the Supreme Court, it is at the most a trading activity. In preparation of cold drinks or dairy products, there is no manufacture or production of any article. As construed by the Supreme Court, such activity is not intended to be covered for grant of benefit under sec. 80J of the Income-tax Act.

6. Relying, therefore, on the decision of the Supreme Court in the case of Indian Hotels Co. Ltd. (supra), the question referred has to be answered in favour of the revenue and against the assessee. It is answered accordingly, but without any order as to costs.

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(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)
(Hariharan)